

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF WASHINGTON

In the Matter of the Application)
Regarding the Conversion and Acquisition)
of Control of Premera Blue Cross and its)
Affiliates,) Docket No. G02-45
)

STATUS CONFERENCE
November 26, 2002
Olympia, Washington

Taken Before:
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1 BE IT REMEMBERED that on Tuesday, November 26, 2002, at
2 9:39 a.m., at the John A. Cherberg Building, Senate
3 Hearing Room 2, Olympia, Washington, before Mike
4 Kreidler, Insurance Commissioner of the State of
5 Washington, the following proceedings were had, to wit:

6
7 <<<<< >>>>>

8
9 COMMISSIONER KREIDLER: Good morning. Today is
10 Tuesday, November 26, 2002. And the time is
11 approximately 9:40 a.m.

12 My name is Mike Kreidler. I am the Washington State
13 Insurance Commissioner. And seated to my right is Carol
14 Sereau, Deputy Commissioner for Legal Affairs, and to my
15 left is Christina Beusch, Assistant Attorney General.

16 This proceeding is a status conference to hear the
17 parties regarding Premera's objection to the Insurance
18 Commissioner's case management order and to discuss the
19 status of this matter.

20 A court reporter is present and will record and, I'm
21 sure, transcribe the record of this proceeding. I have
22 also set up a phone line for persons to call in to listen
23 to the proceeding.

24 Notice of the hearing was given on November 13,
25 2002, and originally was contemplated to be a telephonic

1 hearing. I made the decision that I should change the
2 hearing to be one where we are in person; so I have
3 informed the parties to that effect, and they are
4 present. Also I have informed the potential -- or people
5 who have filed for intervention status. They are also
6 present to offer their comments.

7 The purpose of the hearing is to hear arguments
8 about Premera's objection to the case management order
9 and to have an opportunity to discuss current status of
10 the review process.

11 Background information for this hearing is that on
12 September 17, 2002, Premera made its initial filing on
13 its Form A statement regarding the conversion and
14 acquisition of control of Premera Blue Cross and its
15 affiliates. Thus far, Premera has made supplemental
16 filings on September 17th and October 25th.

17 On October 24th I issued a case management order,
18 which is the first of several procedural orders I
19 anticipate issuing in this matter. The order primarily
20 dealt with deadline of filing of motions to intervene by
21 third parties and a briefing schedule to respond to such
22 motions.

23 However, paragraph one of the order also addressed
24 the time frame for completing my review of and decisions
25 about Premera's application to be acquired by a

1 not-for-profit controlling entity. Review of the
2 application is governed for the most part by the Holding
3 Company Act, Chapter 48.31 C through 48.31 B RCW.

4 The relevant portions of these chapters provide the
5 time frame for my decision to approve or disapprove the
6 application begins to run after I declare the application
7 to be complete and after the hearing, if I -- if I or any
8 other party requests that one be held. I have requested
9 that a hearing be held and anticipate that, prior to
10 the -- to and at the end of the hearing, I will be
11 receiving information from Premera and OIC staff and
12 other experts regarding the details of Premera's
13 application that will be necessary to my decision.

14 Because of the statutory directive and because I
15 anticipate that the initial application will be
16 supplemented through additional information, my case
17 management order provides that the application is not
18 complete until after the hearing is conducted and the
19 administrative record is closed.

20 On November 1, 2002, Premera filed an objection to
21 the case management order arguing that the application
22 was complete when Premera made its most recent
23 supplemental filing on October 25, 2002.

24 In my order setting this hearing, I gave the OIC
25 staff the opportunity to file a response to Premera's

1 objections by November 22nd, which they did. I have also
2 asked each party to provide a status report on the
3 application and review process. Premera asked for the
4 opportunity to reply to the OIC staff, and I followed
5 a -- and I allowed a reply to be filed by 2:00 p.m. on
6 November 25th. The entities that have applied for
7 intervention status have also filed a response to
8 Premera's objections, which I have accepted into the
9 record.

10 For the procedure of this meeting, Premera and its
11 staff will each -- Premera and the OIC staff will each be
12 given 20 minutes to represent their arguments on
13 Premera's objections. They may each reserve part of
14 their time for rebuttal.

15 There are three groups that have filed motions to
16 intervene. At the end of the parties' presentation, one
17 counsel for each potential intervener group will be given
18 five minutes to make argument, to give comments to -- on
19 Premera as objections. I understand that the hospital
20 associations have ceded their time to the consumer
21 groups.

22 Today is the last day for Motions to Intervene to be
23 filed. If there is anybody present who has or will be
24 filing a motion to intervene today, I will certainly
25 allow them five minutes of argument time for them to do

1 so in person.

2 I have questions that I may ask throughout the
3 presentations. If any of the time for argument is
4 significantly curtailed because of my questions, I will
5 exercise discretion to give additional time.

6 I will not rule on the objections today, but will
7 give a written order -- will provide a written order
8 expeditiously.

9 I'm going to open, affording the opportunity to
10 Premera. And if you would be kind enough to carefully
11 state your name and who you represent for the report and,
12 if necessary, certainly, I'd ask the court reporter to
13 let us know if we need to have any spelling of names if
14 things of that nature are necessary.

15 So Premera?

16 MR. MILO: Good morning, Commissioner. My name
17 is Yori Milo. I'm the chief legal officer of Premera and
18 Premera Blue Cross. We'll give the court reporter our
19 card for the spelling of the names, if that's okay.

20 Thank you on behalf of the Premera companies for the
21 opportunity to present today. At counsel table with me
22 is John Domeika, general counsel for Premera. Also with
23 us are attorneys from Preston Gates and Ellis: on my
24 right, Tom Kelly; on my left, Kirk Dublin. And they'll
25 be presenting in the presentation as well.

1 We understand that there are two segments to today's
2 proceedings, the first being oral argument on the motion
3 for partial reconsideration. And it's our understanding
4 that -- if I'm incorrect, I'd appreciate if you'd let me
5 know -- the 20-minute allocation is with respect to that
6 issue, and that following that oral argument, there will
7 be discussion of the status reports. And I will proceed
8 accordingly, unless I got it wrong, Commissioner.

9 COMMISSIONER KREIDLER: I am assuming you're
10 correct. And that's how I'm going to rule, that we will
11 have any additional discussion, if necessary, about the
12 status report following the objection to the order
13 relative to the -- when the record is complete.

14 MR. MILO: Thank you, Commissioner.

15 Before Mr. Dublin gets started on the oral
16 presentation of the motion, I would like to make a
17 comment. Regardless of different interpretations of the
18 Holding Company Act time frames, and regardless of legal
19 issues raised by the motions, Premera believes it makes a
20 lot of sense to discuss mutually agreeable time lines for
21 both prehearing and hearing matters, which would be to
22 the benefit of both parties and the Commissioner.

23 Initially the Commissioner called for a
24 December 27th decision date, which you announced at the
25 public hearing in October wasn't adequate and Premera

1 subsequently submitted a letter proposing to extend the
2 review period to November 1st in lieu of the
3 December 27th date.

4 We believe that March 1st date provides appropriate
5 time for review, meets Holding Company Act requirements,
6 and also would be desirable from the standpoint of giving
7 the parties an understanding of the time line and target
8 dates that we need to comply with for the various
9 components of the process to get a hearing. And we would
10 like to discuss that as part of the status conference.

11 With that, I would ask Mr. Dublin to address the
12 substantive motion.

13 MR. DUBLIN: Morning, Commissioner.

14 COMMISSIONER KREIDLER: Good morning.

15 MR. DUBLIN: My name is Kirk Dublin. I'm here
16 with Preston Gates and Ellis, here representing the
17 Premera Companies.

18 I want to thank Commissioner for giving me 20
19 minutes. Always like to have more than less time, but
20 I'm going to do my very best to actually do it in less
21 time than that. And I would ask, Commissioner, please,
22 to reserve my rebuttal time, whatever I have left, to use
23 after everyone else has said their piece.

24 The motion we're here on, Commissioner, is really
25 pretty straightforward. It's the partial -- motion for

1 partial reconsideration and clarification. And it's a
2 motion which is very narrow in scope, and it's very legal
3 in nature. It deals solely with the issue of when -- the
4 when -- the Commissioner is required by law to render his
5 decision on the pending application.

6 So our motion, if you will, becomes a nonissue if
7 the commission staff and Premera can agree on a schedule
8 for completion of this -- of this proceeding. And again,
9 as Mr. Milo mentioned, that certainly is one of the goals
10 of Premera.

11 Let me state right up front what our position is on
12 this motion. We believe that the Commissioner must
13 complete the entire application process, and that means
14 including the adjudicative hearing, the whole thing,
15 within 60 days after our Form A filing is complete.

16 So this whole motion and all these papers and all
17 these pieces of paper which have been filed in response
18 to this motion really deal with a challenge to only one
19 sentence in one paragraph of your first -- of the
20 Commissioner's first order. And that's the -- as the
21 Commissioner stated in your opening remarks, that's found
22 on page 2 of the first order, case management order,
23 dated October 24, 2002. It sits at the bottom of a
24 paragraph called "Completeness of Application."

25 And it reads, "The application will not be

1 considered complete until the adjudicative hearing has
2 concluded and the administrative record is closed."
3 That's what we're here about, that one sentence.

4 And what Premera proposes is that the law requires a
5 different last sentence or sentences to that paragraph.
6 What we propose as the last sentences to that paragraph
7 is the following language: "The Commissioner's action to
8 approve or disapprove the application and all related
9 reviews and proceedings, including the adjudicative
10 hearing, must be completed within 60 days after Premera
11 has filed the documents required to constitute a complete
12 Form A statement. The Commissioner will issue his
13 determination approving or disapproving the application
14 within the 60-day deadline established by the act or such
15 subsequent deadline as may be stipulated by the parties
16 and confirmed by order." And again, we feel that this
17 language change is necessary to bring the first order
18 into compliance with applicable law.

19 Now, the motion, good news is that it focuses really
20 on, also, very limited statutory language. As the
21 Commissioner stated in his opening remarks, we're here
22 dealing with two basic acts: The Insurer Act,
23 RCW 48.31 B, and the Healthcare Carrier Act RCW 48.31 C.
24 And within those acts we're dealing with some really
25 limited language. And that's found in RCW 48.31 B 015,

1 subpart 4 B in the Insurer Act and in RCW 48.31 C 0304 in
2 the Health Carrier Act.

3 And the acts, in respect to this language, are
4 exactly the same, except the Health Carrier Act makes the
5 public hearing optional versus mandatory. It's
6 irrelevant for purposes of our motions. The Commissioner
7 has declared there's going to be a public hearing, and
8 Premera has absolutely no objections to that.

9 So the language we're talking about -- and I'll read
10 it out of the Insurer Act 'cause that's the required
11 hearing -- "The Commissioner shall approve an exchange or
12 other acquisition of control referred to in this section
13 within 60 days after he or she declares the statement
14 filed under this section to be complete and after holding
15 a public hearing."

16 Now, Premera's position on this is set forth in
17 great detail in two pleadings we filed with your office:
18 The one is the -- Premera's Motion for Partial
19 Reconsideration and Clarification, which we filed on
20 November 1st; and the second is Premera's reply in
21 support of its Motion for Partial Reconsideration and
22 Clarification, dated November 25, 2002.

23 I don't intend to burden this hearing with rereading
24 those briefs. I hope that's good news for you.

25 COMMISSIONER KREIDLER: It is good news, yes.

1 MR. DUBLIN: Instead, I plan to cut right
2 through to the issue and how we see the issue as having a
3 practical import in these proceedings.

4 But I think it's important to start out with what is
5 not at issue in this motion, the things that aren't at
6 issue in any way. The first is whether Premera's Form A
7 statement is now complete. And one thing the
8 Commissioner has stated in his opening remarks -- and I
9 want to clarify Premera's position in this regard --
10 while it is not at issue in this motion whether the
11 statement is complete -- that's a separate topic --
12 Premera is not taking the position that the October 25
13 filing completes the statement. So that's something
14 which the company, Premera, and the staff can certainly
15 work through. But that's just a point of clarification;
16 again, it's not essential to this motion.

17 And the second part is whether the would-be
18 interveners who've been allowed to file papers in this
19 regard, whether they will be allowed to intervene.
20 Again, as Commissioner stated in his opening remarks,
21 that's left to another day and briefing schedules have
22 been set, et cetera.

23 So what is at issue? And I think and I submit that,
24 after reading all the briefing, I think we're down to one
25 issue. Again, it's good news. We keep getting narrower

1 and narrower. And I think the one issue we're down to is
2 this. And again, parties may disagree on how to phrase
3 it. I'll take my best shot. Do the relevant statutory
4 provisions, 48.31 B 015 in the Insurer Act and the 48.31
5 C 0304 in the Health Carrier Act, require the
6 Commissioner render -- that the Commissioner render his
7 final decision on the Premera application within 60 days
8 of the date on which its Form A filing is complete.

9 And I'm going to narrow it even further. The real
10 dispute between the parties, as I understand it, is as a
11 legal matter, must the adjudicative hearing be held
12 within that 60-day window after the Form A filing is
13 complete? That's what this is really all about.

14 And I -- if we look at the issue framed in a more
15 practical approach, one could phrase it as: Can the
16 Commissioner by, for example, simply not completing an
17 adjudicative hearing for weeks or months or even years,
18 delay the final decision on Premera's application
19 indefinitely? That's how Premera sees the issue from a
20 practical standpoint.

21 Again, we've stated our position. The opposition
22 position appears to be that the Commissioner has 60 days
23 from completion of either the Form A filing -- so that
24 triggers a 60 -- or 60 days after the adjudicative
25 hearing -- that triggers a 60 -- whichever occurs later,

1 again, raising -- now, clearly confronting us with a
2 practical issue here of: Is there going to be a time
3 frame around this tied directly to the statement itself,
4 or is it going to be this more expansive view where
5 Premera's -- the final determination on Premera's
6 application won't have to be made till whenever the
7 hearing is held and 60 days thereafter?

8 COMMISSIONER KREIDLER: Mr. Dublin, I can
9 certainly see where there would be the question as to
10 being expeditious. But it certainly seems like the
11 argument here of the 60 days raises some serious
12 questions relative to -- I think we're -- is the
13 Applicant going to say, if they just file a single page,
14 that it's complete and, therefore, it's complete from
15 that point?

16 We're at 16,000 pages right now, as I understand it.
17 And if you stacked up 16,000 pages of technical
18 information, that probably would exceed about 5 feet of
19 technical data.

20 MR. DUBLIN: Right.

21 COMMISSIONER KREIDLER: And I dare say that
22 that information is probably not complete, that there
23 will be other information as I read the papers that were
24 submitted relative to the experts, as they put
25 information in. There'll be rebuttals to that that will

1 be, even, added to that 16,000. All of that's to be
2 contemplated and completed then within 60 days of a set
3 date? Is that how Premera's interpreting it?

4 MR. DUBLIN: I'll answer that in two ways. No,
5 that is not how Premera's interpreting it in this sense,
6 that the number of pages that the Commissioner has
7 referred to is not all part of a Form A statement. And
8 this is -- Mr. Kelly will be addressing this in
9 connection with the status conference.

10 One of the matters that has to be resolved as
11 between the staff and Premera or by yourself, if they
12 can't resolve it, is: At what point is the Form A
13 statement complete? What portion of all those documents
14 that have been submitted constitutes the Form A
15 statement? So that's a subissue.

16 But on your bigger question of whether it's 16,000
17 documents or 20,000 documents, whatever it might be, do
18 those have to be considered by the Commissioner, the
19 experts, et cetera, within a defined time frame, which is
20 60 days from wherever that statement is complete? Our
21 response to that is yes, they do, and that the act
22 contemplates that, takes that into account, the need for
23 time to do all of that, and says 60 days is enough time
24 to do that.

25 Let me also, though, Commissioner, state at this

1 time yet again for the record that Premera has in the
2 past and will in the future, I'm sure, work cooperatively
3 with the OIC staff on this timing issue. So again, if
4 the staff and Premera can work out a mutually agreeable
5 time frame, it moots out the motion.

6 Does that answer the Commissioner's question?

7 COMMISSIONER KREIDLER: Well, I'm still kind of
8 looking at the time lines here as to when the statement's
9 complete. And it seems that tying it to a specific
10 standard that is in statute, that that should be taken
11 absolutely literal under all circumstances. And it seems
12 to me that, given the volume of information that is being
13 submitted and continues to be submitted, and certainly
14 following the model of the Administrative Procedures Act,
15 that it raises some real questions.

16 Because generally, the APA, as I understand it, will
17 establish more or less minimum times. And quite frankly,
18 I can see that we could go through a process where we
19 have a hearing in this process of which there will be
20 additional comments that will be offered, rebuttal to
21 those comments, time to deliberate a huge volume of
22 information that may come off a hearing that may last a
23 week or more.

24 And in order to have that kind of time frame that
25 you try to tie that within 60 days and say that that's a

1 hard number, it would appear that the legislature would
2 never have wanted to constrain a decision of such huge
3 magnitude to the people of the State of Washington to
4 some arbitrary limit like that. And that's the part that
5 I'm just trying to understand relative to Premera's
6 argument.

7 MR. DUBLIN: Yes. Well, again, I do want to,
8 for the record, state the distinction between the Form A
9 filing, the Form A statement, and the discovery, again,
10 because much of what the Commissioner is seeing in the
11 way of documentation relates to discovery versus the
12 Form A statement.

13 Having said that though, the APA does not in any way
14 limit or interfere with the act itself. The holding
15 company acts were derived from a model act, and the model
16 act set a process which was meant to place a premium on
17 the efficient and prompt review of a change in control.
18 And the short discovery periods, in fact, in the short
19 hearing periods, if you will, were meant to drive the
20 parties to focus on the real issues, get them out, get
21 them discussed openly before the Commissioner and in
22 whatever forum the Commissioner feels is appropriate, and
23 get them resolved, meaning, focus -- making the parties
24 focus down versus engage in a fishing expedition.

25 We submit that if the parties indeed do that, focus

1 down on the real issues here -- and again, with full
2 deference to the Commissioner's understandable desire to
3 have various people come in and be heard, et cetera --
4 that that can be done within the 60-day window, again
5 stating that the window when it opens, or when it closes,
6 however you want to say it -- when does the 60-day
7 trigger? -- we still have not arrived at an agreement
8 with the Commissioner, let alone with the staff, on that
9 issue. So that window, as we see it, has not yet -- that
10 trigger point has not yet been reached.

11 Does that -- is that...?

12 COMMISSIONER KREIDLER: Very good.

13 MR. DUBLIN: All right. I'm going to -- I'm
14 told by Mr. Kelly that actually I'm down to about five
15 minutes rebuttal. So I'd like to please reserve that
16 until the conclusion of the other remarks.

17 COMMISSIONER KREIDLER: And I certainly
18 consider the question and answer that I've asked not
19 necessarily to impinge upon your 20 minutes' time.

20 MR. DUBLIN: I appreciate that, Commissioner.

21 COMMISSIONER KREIDLER: The Office of the
22 Insurance Commissioner?

23 MR. ODIORNE: Thank you, Commissioner. Jim
24 Odiorne, Deputy Commissioner of Company Supervision.
25 With me today are Melanie Deleon, Assistant Attorney

1 General; Jim Tompkins from Company Supervision staff; and
2 John Hamje with the legal staff.

3 (Clarifying interruption by the
4 reporter.)

5
6 MR. ODIORNE: And John will be making the
7 presentation for staff.

8 We are encouraged by hearing that Premera wants a
9 full investigation and a thorough investigation of this
10 proceeding. We're encouraged by their desire to
11 negotiate a time frame. John will address the other
12 issues.

13 MR. HAMJE: Commissioner, may I proceed?

14 COMMISSIONER KREIDLER: Please.

15 MR. HAMJE: I also would like to hope that I
16 will not be utilizing all of the time that's been
17 allotted to me, and I would ask, also, to reserve what is
18 unused. And I have timed it to be possibly five minutes
19 or more, depending on questions, to the very end so that
20 I might also be able to have an opportunity to sum up
21 after hearing all of the remarks that are made.

22 I think as we proceed through this process there are
23 some things that help us keep this matter in context,
24 some things that we've got to keep in mind as we move
25 along. I think the first and most important thing is

1 that Premera's application is unprecedented in this
2 state. The proposed transaction, whether ultimately
3 approved or disapproved, could have a significant impact
4 on our citizens and the insurance industry in our state.
5 Yet, in essence, this is a Form A proceeding, just
6 bigger, far more complex than what we have ever
7 previously encountered.

8 Now, we are not here today because we particularly
9 want to be here. We're here because Premera has invoked
10 the jurisdiction of the Commissioner. It has submitted
11 in the Commissioner's discretion and authority for the
12 purpose of getting the proposed transaction approved.

13 This is precisely what was intended by the
14 legislature, and the legislature granted to the
15 Commissioner the discretion and authority to make the
16 determination based upon the record, to ensure that the
17 public interest is going to be protected.

18 Now, we're dealing with two statutory provisions.
19 And of course Mr. Dublin was kind enough to introduce
20 them earlier, and I'm not going to repeat them. But I
21 would like to use basically the same terms to refer to
22 them in a shorthand matter; that is, those -- that
23 relating to insurers in general, and that relating to
24 healthcare service contractors in general. Both are
25 critical in this matter because we have entities that are

1 subject to both that are involved in this transaction.

2 Now, these statutes serve the same precise purpose,
3 but they differ in several respects. Both grant to the
4 Commissioner discretion to determine when the statement
5 is complete. But under the healthcare-service-contractor
6 provision, the statement is deemed complete 60 days from
7 receipt if the Commissioner fails to declare it
8 incomplete and to request additional information.

9 Now, the case management order that's been entered
10 in this matter constitutes a finding by the Commissioner
11 that the statement is not complete and has been -- and as
12 has been pointed out, and I specifically refer to
13 Mr. Odiorne's declaration, which is part of the staff's
14 response, requests for information are still outstanding.

15 Premera's discussion about what is a statement or
16 what is in a statement is a red herring. It's premature
17 to raise this issue. It's not disputed, apparently, that
18 the statement is in complete. When and if Premera
19 decides that it is complete, then the matter should be
20 raised with the staff first. And then if there is no
21 agreement, a ruling should be sought from the
22 Commissioner, and that ruling should be, with reference
23 to specific facts, made a part of the record. So far
24 we're only dealing with generalities, and it's very
25 difficult to be able to make a determination based on

1 these types of generalities.

2 Now, I do want to make it very clear here, too, that
3 just because the staff might agree with Premera on this
4 question, or for that matter on any other question, that
5 does not bind the Commissioner. Clearly the decision is
6 solely within the Commissioner's discretion.

7 And I also want us to keep in mind, too, that there
8 are other provisions of law that may apply that require
9 consideration. And for instance, section 24.03 225
10 concerning the creation of nonprofit foundations, which
11 is an integral part of Premera's proposal, permits an
12 inquiry into such issues as valuation and other matters.
13 So these matters are something that are also going to be
14 subject to these proceedings.

15 So the real issue of what I want to get down to --
16 and it's just like Mr. Dublin; I want to also spend as
17 much time as I can talking about it -- is that of
18 statutory interpretations.

19 We have two statutes, two provisions. Premera reads
20 out of both of these provisions the conjunction "and,"
21 and "and" is, in this case, a very important word. The
22 legislature is presumed to have intended that every word
23 in a statute have meaning.

24 "And" joins together a prepositional clause and a
25 prepositional phrase that, together, modify another

1 prepositional phrase, which is "within 60 days." "And"
2 connects two ideas of equal importance. If we look at
3 the insurance-company provision, it requires that "The
4 determination be made within 60 days after he or she,"
5 referring to the Commissioner, "declares the statement to
6 be complete and after holding a public hearing."

7 And the provision applying to healthcare service
8 contractors requires that the determination be made,
9 again, "within 60 days after the Commissioner declares
10 the statement to be complete and" -- and here it puts in
11 a little parenthetical remark -- "if a hearing is
12 requested by the Commissioner or either party to the
13 transaction after holding a public hearing." The wording
14 is almost exactly the same, except for that parenthetical
15 remark in the healthcare-service-contractor provision.

16 Thus, I do take issue with the statement made by
17 Mr. Dublin. Our position is not either/or, whichever is
18 later. It's the 60-day period only begins after both
19 events occur, unless, under the
20 healthcare-service-contractor provision, no hearing is
21 requested. And in that case, it happens after the
22 statement is declared to be complete or is complete by --
23 as a matter of law.

24 Now, Premera has it backwards, and I'm referring
25 specifically to the interpretation that is presented in

1 Premera's brief, "...within 60 days does not modify after
2 he or she declares a statement to be complete, but the
3 proceeding shall approve"; that is, it shall approve
4 within 60 days.

5 Premera's contribution eliminates "and" from these
6 provisions. And this is made obvious if you look at
7 Footnote No. 4 on page 5 of the reply filed by Premera
8 on -- yesterday. And the language that is cited in
9 support of the interpretation is: "The Commissioner
10 shall approve an exchange or other acquisition of control
11 referred to in this section after holding a public
12 hearing." "And" is gone. It has absolutely no purpose,
13 and that is certainly not preserving the legislature's
14 intent.

15 Also, Premera's discussion about legislative history
16 in the NAIC Model Act is a red herring. To determine
17 legislative intent, only the language of the statute
18 itself is considered if it is unambiguous, and I refer
19 you to In Re Eaton 110 Washington 2nd 892, page 898, for
20 the specific holding, and that's a 1988 Washington
21 Supreme Court case. Legislative history cannot be
22 used --

23 COMMISSIONER KREIDLER: Excuse me, Mr. Hamje.

24 MR. HAMJE: Yes.

25 COMMISSIONER KREIDLER: Would you be good

1 enough to repeat that cite?

2 MR. HAMJE: Certainly. In Re Eaton,
3 110 Washington 2nd, page 892, and the specific holding is
4 on page 898. And that's a 1988 Washington Supreme Court
5 case.

6 COMMISSIONER KREIDLER: Thank you.

7 MR. HAMJE: Legislative history cannot be used
8 to override the express terms of a statute if that is not
9 ambiguous, and I refer you to Kurtly (phonetic) versus
10 State, which can be found at 49 Washington Appeals,
11 page 894, and again on page -- page 898, you can find the
12 specific holding. And that's a 1987 case. Here there
13 has been no suggestion that the statute is ambiguous. It
14 is crystal clear, and discussion of legislative intent is
15 simply not relevant.

16 Now, also the staff has never suggested -- and this
17 is a suggestion that's made in the -- Premera's reply --
18 has never suggested that the application of the
19 Administrative Procedure Act enlarges any time limits.
20 The discussion, with the purpose of bringing in the APA
21 to the discussion, was simply to show how it reveals
22 legislative intent.

23 By making the APA applicable through the requirement
24 of a public hearing, the legislature intended that the
25 protections and entitlements contained in the APA should

1 apply to the parties and the proceedings, and that this
2 purpose should not be frustrated by an artificial time
3 limit applied automatically, resulting in loss of these
4 protections and entitlements.

5 Construing the provisions to require that the time
6 limit only begins after both events occur results in
7 giving effect both to the provisions to the -- the
8 Holding Company Act provisions, as well as the provision
9 of the APA. And the same is true for the language found
10 in the Holding Company Act provisions allowing
11 intervention.

12 Now, this brings us to the legislature's intent that
13 the time limits are directory rather than mandatory.
14 Premiera has engaged in no meaningful discussion of this
15 particular issue in this matter. If the legislature had
16 intended these limits that are set out to be mandatory,
17 it would have included, for example, language providing
18 that if there were no compliance with the limits, the
19 result would be a void order. This is not the case.
20 There are no legal consequences for not strictly
21 following the time limits. And this is consistent with
22 the legislature's grant of broad discretion to the
23 Commissioner.

24 Now, does this mean that the staff is urging the
25 Commissioner to flout the express legislative desire that

1 the adjudicative functions be performed promptly? Well,
2 absolutely not. The staff is saying that all
3 participants in the process must remain aware of the
4 legislative desire reflected in the time limits and allow
5 that desire to guide our actions and not apply those time
6 limits mechanically, without thought or judgment,
7 defeating the very purpose of the entire legislative and
8 regulatory scheme.

9 Thank you.

10 COMMISSIONER KREIDLER: Thank you, Mr. Hamje.

11 Just a question here if -- so that I fully
12 understand the comments that you've just made relative to
13 the appropriateness here. It appears, then, that there
14 is -- you're interpreting the statutory language to
15 provide the Commissioner with some discretion here as to
16 when that statement is complete. At the same time,
17 they -- there is an adherence, then, to the statutory
18 requirement here of 60 days, meaning that you can't be
19 arbitrary and capricious; you've got to be able to be
20 expeditious.

21 Is that how you are interpreting it?

22 MR. HAMJE: Well, there are two time limits
23 we're talking about, and I want to make sure that I
24 understand which one you're referring to. There's a
25 deemer provision, and there's also a provision

1 relating --

2 MS.PRIGGE: Trouble picking you up on KTCV.

3 MR. HAMJE: There's a deemer provision and
4 there's also -- we're talking about the 60-day time
5 limit. Is that the time limit that you're --

6 COMMISSIONER KREIDLER: I'm looking at both
7 from the standpoint of the 60 days, but then also the
8 inclusion of the hearing, the inclusion of the hearing as
9 Premera has proposed, suggested that it would be included
10 within the 60 days.

11 MR. HAMJE: Well, I think there -- clearly
12 the -- the discretion has been granted to the
13 Commissioner with respect to determining whether the
14 declar- -- whether the statement is complete or not.
15 That's clearly in the Commissioner's discretion, and as I
16 think, as you point out, is subject to an
17 abuse-of-discretion standard if it's going to be reviewed
18 by a court on appeal.

19 With respect to the 60-day provision, I believe that
20 ultimately it is subject to the Commissioner's discretion
21 because of the fact that it is a directory rather than a
22 mandatory requirement. And that is that the legislature
23 intended that the Commissioner not blindly apply a time
24 limit without looking at a particular situation, but to
25 use his discretion in judgment in attempting to apply it

1 fairly and equitably. And so that also, then, would be
2 subject to the same standard on appeal.

3 COMMISSIONER KREIDLER: Thank you, Mr. Hamje.

4 My plan here would be to afford the opportunity here
5 for parties to offer comments at this time and
6 effectively to rebut the comment of the other party. And
7 then we will afford the opportunity for those who have
8 filed for intervention status to have five minutes to
9 speak following that.

10 So I would like to turn first to Premera and afford
11 them that opportunity.

12 MR. DUBLIN: On the rebuttal?

13 COMMISSIONER KREIDLER: On the rebuttal.

14 MR. DUBLIN: What we'd ask, please, because it
15 is our motion, that we be allowed to go last on the
16 rebuttal. We know it's only five minutes, and we'll hold
17 to that. But we'd ask please that we be able as moving
18 party be last to speak on that.

19 COMMISSIONER KREIDLER: Well, understanding
20 that type of format, I can appreciate your desire. So I
21 will grant that request and --

22 MR. DUBLIN: Appreciate that.

23 COMMISSIONER KREIDLER: And I'm not sure under
24 those terms whether there be a desire on the part of the
25 Office of the Insurance Commissioner, since they just

1 completed comments, to offer rebuttal or not at this
2 point.

3 MR. HAMJE: What I had understood is that at
4 the end of the all the comments that we would have
5 another opportunity to speak, so I was assuming that -- I
6 understood it that the staff would have an opportunity to
7 speak after the -- Premera had spoken.

8 COMMISSIONER KREIDLER: One moment,
9 Mr... (Pause.)

10 Okay. Well, after the advice of counsel which -- I
11 would suggest then that what we do, contrary to what I
12 said initially, is that we allow the interveners to speak
13 and then afford the opportunity, then, for both parties
14 to speak or offer rebuttal, if that's what it would be,
15 in closing statements.

16 So at this moment, then, I'm going to turn to the
17 interveners. And there are three interveners, I believe,
18 that have filed, two of which will be speaking, one with
19 the -- with the authority to represent one of the other
20 interveners.

21 So at this point I would like to turn and ask you to
22 identify yourself and who you represent.

23 MS. HAMBURGER: Good morning. Thank you,
24 Commissioner. My name is Eleanor Hamburger. And I am an
25 attorney at Columbia Legal Services, and I represent the

1 Welfare Rights Organizing Coalition, which is one of the
2 11 consumer and provider and healthcare worker
3 organizations that moved to intervene on October 14,
4 2002.

5 I'm here today speaking on behalf of, also, Richard
6 Spoonmore and Daniel Gross and the other provider
7 organizations, which include Washington Citizen Action,
8 American Lung Association of Washington, Northwest
9 Federation of Community Organizations, Northwest Health
10 Law Advocates, Service Employees International Union,
11 Washington State Council, the Children's Alliance,
12 Washington Academy of Family Physicians, Washington
13 Association of Churches, Washington Protection and
14 Advocacy System, and Washington State NOW.

15 All of these groups have moved to intervene because
16 of the tremendous public interest and consumer interest
17 in what may happen as a result of Premiera's proposed
18 conversion, and these groups have significant interest in
19 submitting an additional memorandum today to support
20 their motion to intervene.

21 We believe the Insurance Commissioner's discretion
22 and authority in this matter is crystal clear. The
23 Insurance Commissioner has the discretion to determine
24 when the filing is complete under the Holding Company
25 Acts, and he also has the discretion to determine the

1 proper scheduling of discovery, depositions, prehearing
2 conferences, and the adjudicative hearing itself, as well
3 as the completion of the review period.

4 We agree with the Insurance Commissioner's staff's
5 interpretation that, under Holding Company Act, there are
6 two separate 60-day periods. The first is the period
7 under which the statement is declared complete, and the
8 second is the review period. And we believe that the
9 review period, the 60 days to deliberate, only starts
10 after the completion of an adjudicative hearing, if it's
11 held under the two acts.

12 Premera has argued all sorts of convoluted statutory
13 constructions and grammatical constructions, none of
14 which apply here. In a case where the plain language of
15 the statute is clear, no statutory construction is
16 required, and that's from In Re Detention of Brock.

17 In this case the statutory language is fairly clear,
18 and you've heard this one sentence read several times
19 over and over again; I'm not going to reread it. But I
20 just want to try to kind of draw a parallel that might
21 make it a little easier to understand.

22 On the way here this morning, I called my law clerk,
23 and I said, "Okay. I'll meet you in Senate Hearing Room
24 2 after I park the car and after I get some coffee." And
25 the construction of that sentence is exactly the same as

1 what we're talking about in the Holding Company Act; both
2 actions, parking the car and getting the coffee, have to
3 happen before I can meet her in the hearing room this
4 morning.

5 And similarly here, both actions, the completion of
6 the filing of the statement and the completion of the
7 adjudicative hearing must happen before the 60-day
8 deliberation period starts.

9 Moreover, this interpretation just makes sense. The
10 Insurance Commissioner needs enough time to sufficiently
11 deliberate, as you said, 16,000 pages of documents and
12 counting. This is a big deal. It involves one the
13 largest insurers in the state and involves as many as a
14 million people's health coverage, and it could involve as
15 much as \$2 billion in nonprofit assets.

16 Now, under Premiera's argument, everything has to
17 conclude -- has to occur in 60 days. The filing, the
18 decision about interveners, discovery, deliberations, all
19 of that has to happen within 60 days. And that kind of
20 argument could lead the -- lead you to have to either
21 limit discovery or cut short the adjudicative hearing, or
22 even more absurdly, make a decision in the middle of
23 hearing process. And none that makes sense given the
24 clear language of the statute.

25 Now, one of the ways in which you know the

1 legislature thought that this is different from how
2 holding -- you know, the Premera talks about how holding
3 company acts were thought about in 1969. And the
4 legislature has recognized it's different. It's really
5 important to note that, in this particular instance, the
6 legislature did not follow the Model Act.

7 And so the legislative history and the discussion
8 about what the NAIC thought in 1969 just doesn't apply.
9 The legislature rejected the short time frames in the
10 Model Act and put in place time frames that give the
11 Insurance Commissioner ample time to get all the
12 information he needs, ample time to hold a thorough
13 administrative hearing in which persons with significant
14 interest can intervene and participate, and at the end of
15 that whole process, 60 days to deliberate and make a
16 decision.

17 So what's really going on here? Premera has said
18 that it's willing to agree to a later date, but what it
19 really wants is the ability to veto a later date ordered
20 by the Insurance Commissioner. It wants to force the
21 Insurance Commissioner and the staff to come to an
22 agreement. And if things need to change for a good
23 cause, they want the ability to veto that.

24 While Premera says that it wants to push, in the
25 status conference after this, for a scheduling order and

1 a date certain for the conclusion of the process, we urge
2 you not to agree to the March 1st date or any date
3 certain at this point.

4 First, one of the main reasons is, as interveners or
5 as applicants to intervention, today is the day that
6 additional information and the opportunity for other
7 people to intervene if they're going to file stuff. And
8 then the Insurance Commissioner's staff and Premera has
9 have a chance to reply, and then potential interveners
10 have to respond by the 19th.

11 After the 19th, you'll have all the information you
12 need to determine who should be at the table. We suggest
13 at that point, when you determine who is an intervener,
14 that you ask all of the parties, including the
15 interveners, to prepare a joint status report and to see
16 if they can negotiate and come to some agreement about
17 the time frames and discovery and the statement of the
18 issues. This is -- has been done in other conversion
19 transactions, and you'll see in our filing today an
20 example of that in the New Mexico Insurance
21 Commissioner's order of the conversion that occurred
22 there.

23 So we urge you not to set a schedule today or set a
24 schedule at this point, but to wait until all the parties
25 are at the table, and then have an attempt to negotiate

1 among all the parties. We don't think that -- we think
2 that there needs to be a process that is based upon both
3 the Holding Company Act and the APA and that allows for
4 good cause to lengthen the time line, if necessary. We
5 don't want a process that is indefinite or longer than it
6 needs to be.

7 For example, we have intervened earlier than the
8 first case management order. We intervened in October
9 because we were interested in being involved, and we
10 wanted to be prompt and timely and efficient.

11 And Premera raised this issue about fishing
12 expeditions. And part of what seems to be going on here
13 is a concern about wanting to pin down dates and time
14 frames before the interveners are involved and in some
15 ways to limit their involvement and their discovery
16 abilities. And we urge you that -- to look carefully at
17 that.

18 From the correspondence filed by Premera on Friday
19 and from the OIC's declaration on Friday, it appears that
20 Premera itself may have been delaying the process so far.
21 And we are concerned that any kind of date certain would
22 set in place a procedure whereby Premera could withhold
23 pertinent information, particularly from the interveners,
24 while running up the clock, upon which it would claim
25 that you would have to make a decision.

So in conclusion, we urge you to reject Premera's objection and proposed clarification, and we ask that you refrain from any scheduling regarding the hearing and discovery process at this point, and that you wait until a determination is made about all the intervenor parties, and then ask the parties, including the interveners, to sit down and come up with a reasonable time frame that everybody can agree upon.

Thank you.

COMMISSIONER KREIDLER: Thank you very much,
Ms. Hamburger.

Before we go further, there's a request that I afford a two-minute break here, not that people move or anything, but for technicians to adjust the sound. And I presume somebody's going to give me the high sign here as to when that two minutes is complete.

So we're in momentary pause as we adjust the sound system.

(Brief pause in proceedings.)

COMMISSIONER KREIDLER: Thank you very much, Ms. Hamburger. And we'll let the parties proceed.

MR. COOPERSMITH: Thank you and good morning, Commissioner. We appreciate the opportunity to appear before you. My name is Jeff Coopersmith. I'll be

1 uncharacteristically brief. That is no reflection on the
2 significance we attach to this issue, but rather a
3 reflection on the fact that I have to catch a plane
4 momentarily. And that's also why I took the opportunity
5 to serve by hand the supplementary filing that we're
6 making today with Deputy Commissioner Sereau.

7 I am here on behalf of the Washington State Medical
8 Association. The Medical Association represents 8,800
9 physicians across the state, that's 75 percent of all
10 active physicians who deliver direct patient care here in
11 Washington. The Medical Association is opposed to
12 Premera's attempt to convert to a for-profit company, and
13 it is opposed to Premera's attempt to accelerate the
14 review of that attempt. A thorough review of the Premera
15 proposal is in the public's interests.

16 There is no other development on the horizon
17 likelier to have more impact on the delivery of care in
18 Washington state than if Premera were allowed to put
19 profit first.

20 The agency staff and the outside experts that have
21 been retained need the time to conduct the complex and
22 comprehensive analysis required. The statute
23 contemplates such a thorough review. The agency brief
24 and argument that was heard today does an excellent job
25 setting out the legal arguments, as does the Coalition's

1 brief and the argument we heard from Ms. Hamburger.

2 I shall not add further to that for now, except to
3 say that the statute is also designed to allow parties
4 with substantial interests -- with significant
5 interest -- pardon me -- to participate. The Medical
6 Association hopes that the Commissioner will find that
7 the physicians' group, the hospital group, and the
8 consumer groups meet that test. That issue, of course,
9 is for another day.

10 Today the question is whether Premera will be
11 allowed effectively to shut such parties out by having a
12 rushed and limited review. Premera will not be
13 prejudiced if the Commissioner rules against it on this
14 motion, unless a thorough review will bring to light
15 evidence that a conversion is not in the public's
16 interest.

17 Thank you again, Commissioner.

18 COMMISSIONER KREIDLER: Thank you very much,
19 Mr. Coopersmith.

20 And now I'll turn to -- is there anybody present who
21 is going to file as an intervener or has filed today that
22 we were unaware of?

23 I see nobody identifying themselves, so I'm assuming
24 that we have covered the three intervener parties with
25 Ms. Hamburger's and Mr. Coppersmith's testimony.

1 MR. COOPERSMITH: That is correct,
2 Commissioner.

3 COMMISSIONER KREIDLER: Thank you very much.

4 Now I would like to turn back to Mr. Dublin,
5 representing Premera, for any rebuttal comments he would
6 like to offer after the testimony.

7 MR. DUBLIN: Thank you, Commissioner. And just
8 so we're clear on this, will this be the final word or
9 is --

10 COMMISSIONER KREIDLER: Let me ask Mr. Hamje:
11 Did you wish to offer some comments at this point that
12 had not be made?

13 MR. HAMJE: No, I do not.

14 COMMISSIONER KREIDLER: Okay. It will be the
15 final word then, Mr. Dublin.

16 MR. DUBLIN: Thank you, Commissioner. It may
17 be the last time I ever get the final word on anything,
18 so I very much appreciate it.

19 I'd like to start by clarifying Premera's position
20 on this Form A filing, the nature of whether it's
21 complete or not. I understand I may have misspoken. If
22 I did, I want to apologize to the Commissioner for that.

23 But let me now clarify what the position is so that
24 the record and you are clear on that. Premera's position
25 on the Form A, the completion of the Form A filing, is

1 that, with the October 25th submission, that Form A
2 filing is complete. But Premera acknowledges that the
3 staff disagrees with that position, and Premera is right
4 now considering and studying that staff response to
5 determine an appropriate response to it.

6 The point today is, though, that whenever the
7 complete -- whenever it's complete can await discussion
8 on another day. It's not necessary for the Commissioner
9 to decide today whether it is or is not complete to rule
10 on this motion. So hopefully that clarifies the record
11 in this regard.

12 I also find it interesting that the -- as you cut
13 through to -- cut to the proverbial chase here, if you
14 will, there really doesn't seem to be even a lot of
15 dispute that there's this 60-day limit there. There
16 seems to be a desire on the part of certain of those that
17 have spoken to ignore it somehow, wish it wasn't there,
18 somehow wish that the Commissioner could avoid it, et
19 cetera.

20 Unfortunately, if that's the position that they want
21 to take, the fact is that the law doesn't support that.
22 And the -- as we stated before, the APA certainly doesn't
23 support that, and the Commissioner, therefore, as a
24 matter of law, does have to work within this statutory
25 framework. We do submit that the language should be

1 interpreted as we state in our opening paper and our --
2 excuse me -- in our reply brief. We state our reason why
3 there. I, again, won't take your time to restate that
4 here.

5 And I want to only close by saying that, again, the
6 purpose of this motion, Commissioner, was to preserve our
7 record of our understanding of this statute. It was not
8 to accelerate this whole process. If there can be a
9 mutually agreed-upon date arrived at, we've proposed a
10 date, and we certainly are optimistic that we and the
11 staff can work together with you to arrive at a mutually
12 agreeable date, which will moot this current motion.

13 COMMISSIONER KREIDLER: Very good.

14 MR. DUBLIN: Thank you, Commissioner.

15 COMMISSIONER KREIDLER: Thank you very much,
16 Mr. Dublin.

17 As was pointed out, I'm not going to rule on the
18 objection today, but I will be providing and issuing a
19 written order expeditiously. Let me say that I didn't
20 hear anybody say that I ignore the 60-day. It is the
21 interpretation of when that statement is complete and a
22 timing of when a hearing takes place is the matter
23 before -- before us at this time and will be a part of my
24 ruling on those objections.

25 With that, I'm going to complete the portion here

1 dealing with the objection itself and -- and now turn to
2 the issues related to the review of the current status of
3 the review of the Form A filing. I would like to -- to
4 start perhaps by -- perhaps asking the question of
5 Premera in that regard relative to their desire to have
6 an opportunity to react to expert information and just
7 exactly how much time they would anticipate that they
8 would need once that filing is -- once that information
9 is complete.

10 MR. KELLY: Your Honor, could we switch seats.
11 I'm going to try to --

12 COMMISSIONER KREIDLER: Sure. That would be
13 fine.

14 I guess I should ask initially: Is Premera planning
15 to file a response to the expert information? I should
16 ask that first before I ask how much time you're going to
17 take.

18 MR. KELLY: For the record, Your Honor, Tom
19 Kelly from Preston Gates and Ellis, representing Premera.

20 Well, it's always hard to tell what the experts are
21 going to say. We think if they do their job right,
22 they'll join with us in concluding that there should be a
23 conversion. If that doesn't occur, I would expect that
24 we would want to have a response to try and clarify the
25 situation, explain why they were wrong.

1 Our view, as I think we indicated in our
2 supplemental status report, is that the experts should be
3 able to have a what I guess is called -- we would call a
4 "final draft report" available by December 15th. As you
5 know -- and then we -- when I say "draft reports" --
6 because we would like to have an opportunity -- and we
7 think we could do that within a week -- to review the
8 report, not substantively, but purely on the question of:
9 Are there any confidentiality issues that need to be
10 addressed before it's made public, and on any clear
11 factual inaccuracies or corrections that the consultants
12 might want to make a change to so that doesn't become an
13 issue later on?

14 So to answer your question directly, then, if we see
15 some problems with the report, we would expect that we
16 would have a response. We think that can readily be done
17 within this time period of having a decision by the
18 Commissioner by March 1st. We would expect that you
19 would want to have a hearing sometime in mid-February.
20 And there's certainly a good length of time, well in
21 excess of 60 days, I might point out, between the -- the
22 presentation of the consultants' reports from the OIC
23 staff and that hearing, and plenty of time for the
24 interveners, if they are allowed to intervene, to have
25 involvement as well.

1 A point I think that is important to make is that
2 the -- this is not just a case of a staff without
3 significant assistance dealing with this issue. Went out
4 and hired very experienced people and searched across the
5 nation. And those people, in their contract, said that
6 they would be able to evaluate this conversion within,
7 probably, I think it was, about four to five weeks was
8 the time period that they originally set up.

9 And the engagement letter says that resources will
10 not be an excuse on the part of the consultants for not
11 getting their job done. And that's understandable.
12 These are big companies. They have resources to put the
13 man- and womanpower in to get the job done. So while
14 16,000 pages is a lot of pages, in one sense that's
15 simply what's being asked for in discovery. And those
16 number crunchers and reviewers can handle that quite
17 promptly, I would think.

18 COMMISSIONER KREIDLER: Were your -- I think
19 that's certainly correct. And in that regard, I think
20 one question I would probably want to know is: Does
21 Premera anticipate submitting its own expert information
22 at that time, or will it be solely responding to that,
23 the information that is submitted.

24 MR. KELLY: Let me just confer for a minute.

25 I think there's been some -- little clarification

1 here on my understanding. If you're asking were we
2 anticipating presenting something in response to any
3 public review of the consultant's report, the answer is
4 we are not expecting to do that. We do anticipate that,
5 if there's a basis for it in terms of opposition, that we
6 would have consultant testimony or expert testimony
7 available for the hearing itself.

8 COMMISSIONER KREIDLER: For the hearing.

9 MR. KELLY: For the hearing.

10 COMMISSIONER KREIDLER: Right.

11 MR. KELLY: But not for the public review.

12 COMMISSIONER KREIDLER: Okay. So you wouldn't
13 be submitting reports from experts, necessarily, in
14 advance as a part of the or in conjunction with the
15 experts that were conducting the work for the Office of
16 the Insurance Commissioner.

17 MR. KELLY: No. I think the Office of the
18 Insurance Commissioner would be presenting their
19 consultants' reports, and the public would have a chance
20 to comment on them. That's my understanding of the
21 process.

22 MR. MILO: Commissioner, it is all right if I
23 comment?

24 I think Mr. Kelly had it right. With respect to the
25 formal Form A hearing, we anticipate -- we anticipate

1 that we would have prefiled testimony of experts.

2 If the question relates to the second set of public
3 hearings that you've announced will be held after the
4 consultants issue their initial reports, we do not
5 anticipate submitting reports for those hearings.

6 COMMISSIONER KREIDLER: Okay.

7 MR. MILO: Thanks.

8 COMMISSIONER KREIDLER: Thank you.

9 I would like to turn to the Office of Insurance
10 Commissioner and ask if they have an idea at this time
11 when that expert testimony will be available or will be
12 fully both submitted and reviewed to make sure -- to its
13 completeness to the Insurance Commissioner's office.

14 MR. HAMJE: Commissioner, if I may go ahead and
15 address that. I know Jim Odiorne will step in whenever
16 he thinks he needs to clarify things.

17 We don't -- we, in our status report, indicated that
18 we did have not have a specific date where we could
19 anticipate that the experts or consultants would be able
20 to have fully evaluated the materials that they have
21 reviewed to the point where they would be able to prepare
22 a draft opinion or recommendation with respect to the --
23 to the transactions.

24 Presently, the current situation right now, Premera
25 has provided and made available on the 20th a lot of

1 documents, and we -- our consultants are reviewing those
2 documents, and we are waiting to hear from them as to the
3 completeness of the documents and as to what other
4 documents might be needed. We will get a better idea of
5 how much more is going to have to be provided after we've
6 been able to hear from our consultants, hopefully within
7 the next couple of days.

8 COMMISSIONER KREIDLER: Could there be some
9 estimate, broadly, as to when that might take place?

10 MR. HAMJE: When -- our visit with them?

11 COMMISSIONER KREIDLER: Well, as to when we
12 will have a complete -- when we will have satisfactorily
13 received the information that the OIC is requesting.

14 MR. HAMJE: I think we're reluctant to go ahead
15 and try to estimate any date at all at this point, and
16 the reason is very simple. In the usual Form A process
17 or, even an examination process as well, there is a give
18 and take between the company and the staff. And during
19 the period of time there are requests made for
20 information, information is provided, sometimes that
21 information indicates that more information is needed
22 because it opens up other avenues that turn out to be
23 important and relevant to the transaction.

24 And at this stage of the game, we are not to the
25 point where we know where we can get our arms around

1 the -- the material that we're going to need, that our
2 experts are going to need, to be able to provide -- you
3 know, provide their opinions.

4 And so, you know, as much as I would like to be able
5 to come forward with a date certain to give you an
6 approximation on, I think what we can only do is, on a
7 step-by-step basis, as we meet with the consultants and
8 issue additional requests for information and also confer
9 with Premera about the materials and arrive at,
10 hopefully, some agreements with respect to these, that
11 within the next -- I can't say. Within the next few
12 weeks, I hope we'll have a better idea.

13 I do want to point out one thing is our experts, who
14 clearly, Mr. Kelly has indicated, are very experienced,
15 they have always, from the very beginning, told us that
16 it would take at least 60 days from the date that they
17 had the substantial -- substantially complete information
18 to be able to put together a draft.

19 We were able to impose upon them for the December 1
20 time limit as long as we built into the contract a
21 flex -- a provision for flexibility in case they were not
22 able to meet that date. And so that is why the
23 December 1 date was determined; we were trying to put
24 their feet to the fire to get them to move. But it's
25 very clear, because of the way circumstances have

1 proceeded, that the December 1 date will not -- will not
2 be -- will not be met.

3 MR. KELLY: Your Honor, if I could -- I'm
4 sorry.

5 COMMISSIONER KREIDLER: Excuse me, Mr. Hamje.
6 Do you want to offer more about the questions?

7 MR. HAMJE: Your Honor -- or I'm sorry --
8 Commissioner, what I have -- we did receive from two
9 consultants yesterday some e-mails, which specifically
10 set out a number of items that they have not received,
11 including certain correspondence that's been requested,
12 detailed unemployment contracts and severance agreements,
13 electronic copies of stored projections, nonredacted
14 board minutes. These are things that they believe they
15 need as well as additional detail regarding Premera's
16 current and proposed executive compensation, as well as
17 detailed tax filings.

18 These lists are not all-inclusive and not highly
19 detailed because it was just -- they were just trying to
20 go ahead and give us an idea of what their -- what
21 they've already encountered. And they intend -- as one
22 of them has indicated, they are in the process of
23 cataloging those items that are still needed.

24 And so we hope in the next few days to be able --
25 maybe as early as next week, to have something more

1 specific about it.

2 Did you want to add anything?

3 Well, and Mr. Odiorne's also asked me to also
4 mention that, keep in mind that all of this documentation
5 is under Premera's control and in their possession. So
6 we are in a position that we have to request it and
7 obtain it to be able to go ahead and have our consultants
8 review it.

9 COMMISSIONER KREIDLER: Very good.

10 And now, Mr. Kelly, did you have --

11 MR. KELLY: Just three or four responses --

12 COMMISSIONER KREIDLER: -- anything in response
13 to this?

14 MR. KELLY: -- to this.

15 First of all, I think the problem now is, it's not a
16 question of feet to the fire; there's just no fire at
17 all. And that's what you need to put on both parties or
18 all parties, to say there's a deadline. People are going
19 to have to work hard. And if there's good cause for an
20 extension of the deadline within the 60-day period, we
21 would argue, then, bring it in to the Commissioner, and
22 we'll decide on it.

23 But I heard Counsel go from that he thought he could
24 give you within the next few days an estimate of when
25 they're going to be done, to now it's going to be the

1 next few weeks. I'm afeared if he gets to speak again,
2 it will be the next few months.

3 But seriously, we want to cooperate. There's been a
4 give and take. If there's documents they want, they
5 should forward that e-mail onto us, and we'll discuss it
6 and deal with it. If they say we're not cooperating,
7 they have a remedy to come in and compel, through your
8 offices, us to do it. I don't think that's ever going to
9 happen.

10 But that's the solution: to have a deadline and then
11 force people to meet it.

12 COMMISSIONER KREIDLER: Okay. Ms. Sereau,
13 would like to offer --

14 MS. SEREAU: Mr. Hamje, I noted that kind of
15 slip from a couple of days to -- I think it went to a
16 couple of weeks. And I would like to clarify for myself
17 which you intended to say. I understand -- my -- what I
18 got from what I said before was that in a certain time in
19 the future you expect to get reports from the consultants
20 that will enable you to say with more specificity exactly
21 where you are on the process.

22 Is that going to happen in a couple of days? Could
23 you give me more exact understanding?

24 MR. KELLY: I will. And of course I can always
25 be incorrect. But my understanding is that when we get

1 some more information about what the consultants have
2 seen these last couple of days -- remember the 20th was
3 really the first day when we had complete access to all
4 of the records that had -- that had been requested,
5 subject to some that apparently have not yet been turned
6 over. And they are looking at these records.

7 Once we are able to get a better estimate of what
8 they have, we will be in a position to report to the
9 Commissioner where we are in the process. Now, I can't
10 say what date we're going to be able to say "Well,
11 everything's going to be complete." I certainly cannot.
12 And I don't believe that we're in a position where we can
13 say that at this point.

14 But maybe in the next few weeks we maybe able to --
15 depending on how the process continues, we may be able to
16 come to that. It just depends upon, again, how the
17 process continues.

18 MS. SEREAU: So let me rephrase to see if I've
19 got it. In the next couple of weeks you anticipate being
20 in a position to be able to say more definitively what
21 the immediate future looks like, as far as your review.

22 MR. HAMJE: Well, certainly -- I think the
23 words I used were "where we are in the process." And in
24 this -- and I think that is a really all we can say at
25 this point. It's -- as I said, these processes in a

1 situation like this, it's much larger than what we've
2 dealt with before and other Form As.

3 But in other Form As, it is this type of give and
4 take, where the staff works with the company to get the
5 information that it needs, and it's on an informal basis.
6 And the two parties try to work through this thing
7 without appeals to higher authority.

8 That may not be the case here. We may at some point
9 in time be in a position where we can't agree on
10 something, and it may be necessary for us to come back to
11 the Commissioner for assistance. But I hope that has
12 helped clarify.

13 MS. SEREAU: Yes. Thank you very much.

14 MR. HAMJE: Thank you very much.

15 MR. KELLY: If I could just --

16 MR. MILO: Mr. Kelly, it would appear that
17 Mr. Hamje has a reasonable point that he's making
18 relative to -- from the standpoint of not -- if all of
19 the information is -- that the most recent was requested,
20 it takes time to review that and so forth. So it does
21 leave a little bit of ambiguity in there.

22 What are you specifically looking for from a
23 standpoint of the interpretation here for timing?

24 MR. KELLY: We believe that the schedule needs
25 to drive the experts, not the experts deciding the

1 schedule, for two reasons: One, they're experts; they'll
2 always want more time to mull things over. Two, it is in
3 their financial interests to take more time. This is an
4 open-ended process, and there needs to be some control.

5 We say, give them what they -- and these experts,
6 when they signed up -- it may be new for the staff, but
7 these were hired because they had done it before, and I'm
8 sure we're not all that different from all the other
9 institutions around the country. And they said, "We can
10 do this in five weeks. Four to five. I don't know the
11 exact date, but that's about the timing. And they have
12 the personnel to review those documents and get done.

13 We would like a deadline of December 15th for that
14 report. And we will cooperate, and everybody is going to
15 be working hard to get this matter done. But you can't
16 just say, "Well, gee, here's something else we thought we
17 might like, so until we know everything we might like
18 and" -- we can't even have a schedule.

19 That shows the peril, by the way, and maybe one of
20 the reasons why the legislature said, "Here's a
21 reasonable time period. This is what you have to do," is
22 you need to drive others to make sure you have the time
23 to do your job right.

24 COMMISSIONER KREIDLER: Well, I think you raise
25 a reasonable point from the standpoint of the term

1 "reasonable." Because I think that there is always going
2 to be pressure on consultants to make sure that they are
3 responding and in a timely fashion.

4 The same point -- at the same time, I think that is
5 the ambiguity that is being raised, is to a very complex
6 filing that is one that, in comparison to looking at
7 what's taking place in other states, has not been one
8 that's been a slam dunk. It seems like there is an
9 opportunity here to see where we can find that the OIC
10 needs to be putting pressure, but at the same time, is
11 not one that's going to be bound by a firm deadline. If
12 there has to be a -- it has to be reasonable. I believe
13 you used that term yourself.

14 MR. KELLY: I did. And if you would set a
15 deadline and say that if they can show good cause for an
16 extension of it, within a outer limit of when you have
17 that hearing done, that's certainly within your
18 prerogative. But otherwise, we're going to be back here
19 weeks from now, hoping that some day soon the experts
20 will decide they might be able to put pen to paper and
21 get your report.

22 MR. HAMJE: Commissioner, may I say something?

23 COMMISSIONER KREIDLER: Mr. Hamje.

24 MR. HAMJE: I have a suggestion. And it's, of
25 course -- you know, we've all had experience before with

1 other matters where there are -- there is oversight
2 exercised by a tribunal over the activities of parties
3 where there might be a need for status conferences from
4 time to time.

5 Where I would think that we could really use the
6 services of the Commissioner, maybe on a regular basis we
7 might set status conferences, such as this, where we,
8 maybe on every other week or something like that, where
9 we get together with the Commissioner in a forum such as
10 this and update as to where we are, bring this
11 information out so that you have an opportunity to go
12 ahead and gauge how the progress is going.

13 And certainly that would -- that would certainly, I
14 believe, help hold everybody's feet to the fire, so to
15 speak, and at the same time would keep you apprised of
16 what's going on.

17 COMMISSIONER KREIDLER: Mr. Kelly, how do you
18 respond to that suggestion?

19 MR. KELLY: Two parts. Number one, if you have
20 firm deadlines at hand for everyone, then status reports
21 as to the progress towards those deadlines make sense.
22 So we have no problem with meeting, either informally or
23 formally, and with status reports might be fine, as long
24 as they don't become the excuse or the end in themselves.

25 So it's kind of like trust but verify. Schedule but

1 then consider.

2 COMMISSIONER KREIDLER: Okay. But then beyond
3 the expert information and when that's done, I think
4 there's still some question as to the amount of time
5 that's going to be necessary for prefiled testimony
6 before the hearing time that will be required in order to
7 prepare that adequately once the expert information is
8 available and we have all of the information that's going
9 to be, presumably, necessary up to that point.

10 But you're still going to take time for prefiled
11 testimony. And I think trying to have an idea just
12 exactly how much time that will take would be of
13 interest.

14 Mr. Kelly?

15 MR. KELLY: The -- I think, again, you need to,
16 when you set the time for the hearing, to give yourself
17 enough time, then, to still make the decision and go
18 backwards from there. And I think that there are really
19 two tracks here: One is the experts which are going
20 forward; they've already gotten their experts designated;
21 and pretrial -- prefiled testimony can easily be
22 scheduled within the next, what, two and a half months
23 that we would have between now and the hearing date, if
24 we have a hearing date in mid-February.

25 So I think -- the other thing is I think it is

1 practical, once you set that date, to ask the parties to
2 get together and come up -- and see if they can come up
3 with an agreed schedule for all the other deadlines that
4 they need to meet.

5 COMMISSIONER KREIDLER: Mr. Hamje or
6 Mr. Odiorne, either of one of you. Is that pretty much
7 in the same category?

8 MR. HAMJE: Yes. We really -- we really --
9 it's too soon for us to be able to come to any conclusion
10 until we -- we do have four consultants that -- we don't
11 know what it's going to take, what's going to go into the
12 prefiled testimony. And we have no idea until they
13 actually put together a draft document. And then we can
14 begin to formulate what we're going to be able to include
15 and what we should include in prefiled testimony.

16 COMMISSIONER KREIDLER: One other question that
17 would come up that we still need to -- that I need to
18 resolve with an order, and that will be the status of
19 interveners. And certainly part of their -- a part of
20 that order will be the -- their ability to conduct
21 discovery, hire experts, the issues related to submitting
22 prefiled testimony and other expert reports. Those are
23 all going to be ones that will need to be resolved as a
24 part of the -- of a future order that I will be issuing.

25 So that's a matter yet that is going to require some

1 time, and I think we need to make sure that we don't lose
2 track of that responsibility, Mr. Kelly.

3 MR. KELLY: I guess all I would say is, you
4 obviously haven't made your decision yet about
5 intervention, so it would be somewhat premature to say --

6 COMMISSIONER KREIDLER: Right. Those are
7 issues, though, that I'm going to have to resolve and
8 make clear. And obviously, how I word that -- their
9 authority as interveners is going to take time for them
10 to complete their obligation.

11 MR. KELLY: I think, you know, the timing on
12 this could work out well. Your ruling, I understand, is
13 expected to be on December 19th. Hopefully these reports
14 could come out on December 15th, so things would then --
15 everyone would be starting out at the same time.

16 I just think that you need to be realistic that the
17 two major interests here, the ones that the legislature
18 has defined, are the OIC staff representing one viewpoint
19 and Premera representing another. And I think it would
20 be anomalous if the interveners could extend out any time
21 periods. But I think we would have to comply within the
22 limits of what the parties have agreed to.

23 COMMISSIONER KREIDLER: Let me say this from my
24 standpoint here that -- to make sure everybody
25 understands, that there are staff within the Office of

1 the Insurance Commissioner that are effectively walled
2 off from me at this time as a part of this process.
3 Mr. Hamje and Mr. Odiorne are both on the other side of
4 the wall, so I'm dealing with them in much the same way
5 that I would be dealing with Premera at this point until
6 they submit a recommendation to me as staff at some point
7 following, presuming, the hearing that will take place.

8 It is very much of my interest to make sure that we
9 are proceeding with the process of this filing for
10 conversion by Premera in a timely fashion, or an
11 appropriate amount of time is taken that we don't rush it
12 and become too quick to make judgment on complex issues,
13 that we do have all of the information that's necessary.
14 But at the same time, not be arbitrary and certainly
15 capricious, we are going to act with due diligence.

16 And I think the suggestion that has been made here
17 by Mr. Hamje, that we have periodic opportunity here to
18 talk about the process and progress that we're making,
19 would be beneficial to all of the interested parties so
20 that we make sure that we're staying on the time frame,
21 that we're not missing important dates and times, and we
22 set them where necessary.

23 So with that I'm going to -- unless there are any
24 other comments by the parties that they would like to
25 make at this time.

1 MR. KELLY: I just had three brief ones, Your
2 Honor, Mr. Commissioner.

3 COMMISSIONER KREIDLER: Sure.

4 MR. KELLY: First, we would ask that, as part
5 of any rulings that you make coming out of this status
6 conference, you make a ruling clarifying the fact, as we
7 believe it, that these data requests are not a component
8 of the Form A. The Form A is a statutorily defined
9 statement.

10 It is appropriate for people to ask for discovery,
11 and that's fine. But there's a big difference between
12 the Form A and these discovery requests. And I think
13 it's important to have that clarified lest it become a
14 problem.

15 We'd also ask for a ruling regarding a time period
16 for document production. We think, as we've indicated,
17 that the time period for due diligence for the
18 conversion, which is what is at issue here, five years
19 would certainly be more than enough to go back. And I
20 think Mr. Odiorne originally proposed January 1, 1997.
21 That's more than five and a half years back.

22 Now, we, for informational purposes, the financial
23 examination back to January 1, '95, the market conduct
24 exam back to October 1, '93. As long as that is not
25 considered to be reopening of any prior examinations, to

1 the extent that provides information that's of value to
2 evaluating the conversion, that is something we don't
3 have a problem with.

4 The request to go back to 1933, I think there you
5 just have a case of the experts saying, "Gee, wouldn't it
6 be nice to -- I wonder what happened way back then." How
7 any of that data going back more than, say, five years or
8 so is pertinent to the current situation for this company
9 or the conversion is hard to understand.

10 And so we'd ask that you limit the document
11 production to those time periods. Again, if they want to
12 come back in later and say, "Well, it's something we
13 particularly need here," that could possibly be done.

14 The third thing I'd ask for is a ruling that
15 discovery recording valuation is not needed here because
16 valuation is not an issue in this particular case. Here
17 the plan is for Premera to provide 100 percent of the
18 stock of the new company to the foundation shareholder
19 upon conversion. This represents 100 percent of its
20 value, including ongoing business and goodwill. And so
21 there isn't any need for valuation. And I'm not asking
22 for a ruling from the bench now, but I ask that that be
23 ruled upon because I think it will facilitate moving
24 ahead.

25 COMMISSIONER KREIDLER: Mr. Kelly, I would just

1 add that I -- none of these matters are really before us
2 at this time. We really are really talking about setting
3 the timing for the process that we have in front of us
4 and in getting a status report where we're at right now.
5 And these are details that I believe will be resolved or
6 be part of the hearing and expert information that's
7 collected and separate from what we're considering at the
8 moment.

9 MR. KELLY: Well, it seems to me that they
10 really are all discovery requests that are being made
11 which are relevant. Whether they are relevant -- if they
12 are not relevant, then we don't have to go through them,
13 and we can facilitate things more quickly. And I thought
14 that the status was to find out about or was focused on,
15 well, what are the requests, and what is the standing on
16 these. And I thought that you would be ruling at some
17 point, not today obviously, on what is going to be
18 required and what isn't going to be required. That's
19 really what we're asking for. We can certainly form that
20 as a motion, if they would be preferable to you.

21 COMMISSIONER KREIDLER: I appreciate your
22 suggestion as to what my ruling would include. I'd like
23 to ask Deputy Commissioner Sereau for Legal Affairs to
24 offer some comments to this point.

25 MS. SEREAU: Thanks, Commissioner.

1 Mr. Kelly, I do think that these three requests as
2 to what the order should cover have not been properly,
3 you know, brought before us. They haven't been fully
4 briefed and Premera's motion, the moving papers didn't
5 really address these particular issues. And I don't
6 think the other briefs have had adequate opportunity to
7 do so either.

8 So I would suggest, particularly with respect to the
9 ruling about the period for document production, I
10 haven't seen that really raised in the moving papers or
11 addressed in other briefs. And I think that is deserving
12 of separate briefing if you want to raise that as an
13 issue.

14 Also, the business about the discovery regarding
15 valuation being irrelevant, I do believe that that was at
16 least mentioned in Premera's brief, but that, again, is
17 kind of a big issue. And if Premera really wants there
18 to be an order with respect to that, I think that needs
19 to be separately briefed.

20 MR. KELLY: Understood. I again, though, just
21 don't want this to be cause for delay of deciding other
22 things. I think you can go along two tracks: discovery
23 and enforcement or motions to limit, obviously ongoing in
24 the context of, Well, we've got the deadline to get
25 things done as well.

1 The final point that I want to add is or to
2 reiterate, perhaps, is we think, really, that there
3 should be at least three key dates set as a result of the
4 status report or status conference. One would be these
5 consultant draft reports. You know, they're there.
6 They're not the end of the game. They are a part of it.
7 They're something that should have public comment.
8 There's many benefits to the public to getting those
9 reports out after they've had a considerable period of
10 time. And I think December 15th is the time to do it so
11 then you can have a hearing promptly.

12 The second point is you need -- we believe you need
13 to set a hearing date; we'd suggest mid-February. It may
14 take a couple of weeks for a hearing, and then it would
15 give you some time to make your decision by March 1.

16 The final point I would add is, of the other side:
17 We said March 1. When is it that they think that this
18 hearing should occur, or is it just going to be something
19 that no one can figure out for a long time? And doesn't
20 that really prove the point of the need for setting a
21 hearing date?

22 Thank you.

23 COMMISSIONER KREIDLER: Thank you very much,
24 Mr. Kelly. I will certainly take your comments under
25 advisement.

1 MR. KELLY: Okay.

2 COMMISSIONER KREIDLER: And I will be ruling on
3 your -- on the objection relative to the completeness of
4 the statement. And I would say that we're certainly
5 appreciative of the concerns that are being raised by
6 Premera and are going to take only the amount of time
7 that is absolutely necessary to do what we're required to
8 do.

9 It is tough, I can -- I'm sure, for a complete
10 evaluation of information to take place and be able to
11 say just exactly when that will be. But certainly having
12 pressure on the parties to be able to keep their, so to
13 speak, their feet to the fire is important.

14 But at the same time, making sure that they have all
15 of the information they need in order to give the best
16 advice to protect the consumers of the State of
17 Washington to the highest degree possible is something
18 that we all consider of principaled and primary
19 importance here.

20 So with that in mind, we will be setting up shortly,
21 without specifying a time, another opportunity here where
22 we can have a status review discussion. I would
23 anticipate that being something that would be done within
24 the next couple weeks or so, and that we can also work
25 toward trying to set firm times here, as firm as we can,

1 as to a schedule for upcoming events, and perhaps even a
2 an outline as to when we might be anticipating the
3 potential of holding that hearing in the -- sometime
4 after the first of the year.

5 With that, I'm going to conclude the hearing and
6 thank the parties that participated.

7 MR. KELLY: Thank you, Commissioner.

8 MR. HAMJE: Thank you, Commissioner.

9 (Proceedings concluded at 11:16 a.m.)
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C E R T I F I C A T E

I, SUE E. GARCIA, a duly authorized Court Reporter and
Notary Public in and for the State of Washington, residing at
Tacoma, do hereby certify:

That the foregoing proceedings were taken before me on
the 26th of November, 2002, and thereafter transcribed by me
by means of computer-aided transcription, that the transcript is
a full, true, and complete transcript of said proceedings;

That I am not a relative, employee, attorney, or
counsel of any party to this action or relative or employee of
any such attorney or counsel, and I am not financially
interested in the said action or the outcome thereof;

IN WITNESS HEREOF, I have hereunto set my hand and
affixed my official seal this December 2, 2002.

SUE E. GARCIA, CCR, RPR
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